Saeger Carbide Corporation and Charles J. Swick, Esquire, Petitioner and United Steelworkers of America, AFL-CIO-CLC. Case 6-RD-765

9 August 1983

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

By Chairman Dotson and Members Jenkins and Zimmerman

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on 31 July 1981, the Employer's motion to dismiss the objections, and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs and hereby adopts the Regional Director's findings and recommendations.²

The facts are undisputed and are fully set forth by the Regional Director in the attached Appendix. The Union's attorney averred that the reason for his failure to comply with our service requirements was that "the necessity to serve Petitioner with a copy of the objections did not adequately register with me, and I omitted to serve Petitioner." In our opinion, the explanation given by the Union's counsel illustrates neither "an honest attempt to substantially comply with the Rules" nor "a valid and compelling reason why compliance was not possible within the time required by the Rules."

It is now well settled that the presence or absence of prejudice to the party on whom objections should have been timely served is irrelevant in determining whether the objecting party made "an honest attempt to substantially comply" with Section 102.69. See, e.g., Platt Brothers, 250 NLRB 325 (1980); Auto Chevrolet, Inc., supra; Alfred Nickles Bakery, Inc., supra. Therefore, this factor is irrelevant.

Since the Union has established neither an "honest attempt to substantially comply" with our requirements nor a "valid and compelling reason"

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 34 for, and 36 against, the Union; there were no challenged ballots.

for its noncompliance, we will affirm the Regional Director, dismiss the Union's objections, and issue the appropriate certification. See, e.g., *Platt Brothers, supra*.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for United Steelworkers of America, AFL-CIO-CLC, and that said labor organization is not the exclusive representative of all the employees, in the unit involved herein, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

APPENDIX

On August 5, 1981, the Union filed timely objections to conduct affecting the results of the election.

It is undisputed that the Union did not affect [sic] service of its objections on the Petitioner until approximately 4:45 p.m. on August 14, 1981, 9 calendar days and 7 working days after filing of the objections. On August 14, 1981, the Union took steps to effectuate service on the Petitioner after being informed by a Board Agent of its failure to do so. The Union contends that its failure to serve the Petitioner until August 14 was inadvertently [sic] and nonprejudicial inasmuch as the objections did not relate to the Petitioner's conduct.

Section 102.69(a) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, states, *inter alia:*

Within five days after the tally of ballots has been furnished, any party may file with the Regional Director an original and three copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objection shall immediately be served on the other parties by the party filing them, and a statement of service shall be made. [Emphasis added.]

In Alfred Nickles Bakery, Inc., 209 NLRB 1058, 1059 (1974), in a discussion of Section 102.69(a), the Board held:

Our Rules and Regulations have been developed and adopted for the purpose of providing for the orderly processing of representation cases within the framework of the National Labor Relations Act. In order to maintain the orderly processing of these cases, there must be adherence to the Board's Rules and Regulations. We do not say that there will be a "slavish" adherence to form rather than substance. What we do say, however, is that in order to support a variance or deviation from the clear requirements of the Board's Rules, there must

² In affirming the Regional Director's dismissal of the Union's objections due to its failure to comply with Sec. 102.69 of the Board's Rules and Regulations, Series 8, as amended, we find that the Regional Director properly found that the Union failed to show either "an honest attempt to substantially comply with the Rules" or "a valid and compelling reason why compliance was not possible within the time required by the Rules. Auto Chevrolet. Inc., 249 NLRB 529 (1980), quoting Alfred Nickles Bakery. Inc., 209 NLRB 1058 (1974) (Sec. 102.69 has subsequently been amended to provide for service of objections by the respective regional director. The case at hand, of course, is governed by the rules prior to the amendment.)

be some showing that there has been an honest attempt to substantially comply with the requirements of the Rules, or alternatively, a valid and compelling reason why compliance was not possible within the time required by the Rules.

Thus, in order to support a variance or deviation from the clear requirement of Section 102.69(a), the objecting party must either show "an honest attempt to substantially comply with the Rules" or "a valid and compelling reason why compliance was not possible within the time required by the Rules." Alfred Nickles Bakery, supra. See also Platt Brothers, 250 NLRB 325 (1980); St Johns Smithtown Episcopal Hospital, 250 NLRB 620 (1980); and Auto Chevrolet, Inc., 249 NLRB 529 (1980). Moreover, the Board has held that the presence or absence of prejudice to the party on whom objections should have been timely served is irrelevant in determining whether the objecting party made an honest attempt to substantially

comply with the Rules on service of objections. See, e.g., St. Johns Smithtown Episcopal Hospital, supra.

Based on the above, I find that the record does not establish either an honest attempt by the Union to substantially comply with the Rules on the service of objections, or a valid and compelling reason why timely compliance with those Rules was not possible. Therefore, I conclude that the Union's objections were not properly filed and served pursuant to Section 102.69(a) of the Board's Rules and Regulations.²

¹ I deem *The Nestle Company*, 240 NLRB 1310 (1979), relied on by the Union, to be factually distinguishable from the instant case. In *Nestle*, the evidence disclosed that the individual filing the objection was a lay person who was unfamiliar with the Board's procedures for filing objections. In the instant case, the Union does not allege, nor would I find, that it had such unfamiliarity with Board procedures.

² I find it unnecessary to decide if the Employer has standing to object to untimely service of objections on the Petitioner.